

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

April 3, 2018

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LETTER OPINION FILED WITH THE CLERK OF THE COURT

Re: Virtu KCG Holdings LLC, et al. v. Min Li
Civil Action No. 17-8296 (SDW) (CLW)

Counsel:

Before this Court is Defendant Min Li's ("Defendant") Motion for an Automatic Stay Pending Appeal. (ECF No. 30) This Court, having considered the parties' submissions, and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, **GRANTS** Defendant's motion.

DISCUSSION

This Court assumes the parties' familiarity with the factual background and procedural history in this matter and thus will summarize only those facts relevant to the instant motion. On February 6, 2018, this Court denied Defendant's Motion to Stay and Compel Arbitration. (ECF Nos. 18, 28.) Thereafter, Defendant filed a Notice of Appeal to the Third Circuit and a Motion for an Automatic Stay Pending Appeal on February 19 and February 20, 2018, respectively. (ECF Nos. 29-30.) Plaintiffs opposed the motion on March 5, 2018, and Defendant replied on March 12, 2018. (ECF Nos. 33-34.)

Under the Federal Arbitration Act (“FAA”), a party may appeal an order that refuses to stay an action pending arbitration, or denies a petition for an order compelling arbitration. 9 U.S.C. §§ 16(a)(1)(A)-(B). Such an appeal “automatically stays proceedings in the district court” unless the appeal is “frivolous or forfeited.” *Kim v. Dongbu Tour & Travel, Inc.*, 529 F. App’x 229, 233 (3d Cir. 2013) (citing *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007)); see also *Southco, Inc. v. Reell Precision Mfg. Corp.*, 331 F. App’x 925, 929 n.7 (3d Cir. 2009) (“An appeal is frivolous when it is wholly without merit.”). This Court stands by the findings and conclusions of law contained in its February 6, 2018 order and opinion. However, because Defendant’s appeal is neither frivolous nor forfeited, this case will be stayed pending appeal.

CONCLUSION

For the reasons set forth above, Defendant’s Motion for an Automatic Stay Pending Appeal is **GRANTED**. An appropriate Order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk
cc: Parties
Cathy L. Waldor, U.S.M.J.